

(5)

Supreme Court, U.S.

FILED

NOV. 14 1990

JOSEPH F. SPANIOLO, JR.  
CLERK

No. 90-143

**In The**  
**Supreme Court Of The United States**

OCTOBER TERM, 1990

**STATE OF CONNECTICUT,**  
**JOHN F. DiGIOVANNI,**  
*Petitioners,*

v.

**BRIAN K. DOEHR,**  
*Respondent.*

ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

**JOINT APPENDIX**

CLARINE NARDI RIDDLE  
ATTORNEY GENERAL OF THE  
STATE OF CONNECTICUT  
HENRY S. COHN\*  
Assistant Attorney General  
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*Counsel for Petitioner,*  
*State of Connecticut*

ANDREW M. CALAMARI  
*Counsel for Petitioner DiGiovanni*

JOANNE S. FAULKNER\*  
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New Haven, CT 06511  
(203) 772-0395  
*Counsel for Respondent*

\*Counsel of Record

Petition for Certiorari filed July 20, 1990.  
Certiorari Granted October 1, 1990.

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**RELEVANT DOCKET ENTRIES  
IN THE COURTS BELOW**

**I. United States District Court for  
the District of Connecticut**

**Docket No. N-88-339WWE**

|                   |  |
|-------------------|--|
| August 8, 1988    | Complaint Filed  |
| August 31, 1988   | Motion for Summary Judgment filed by Plaintiffs  |
|                   | Statement of Material Facts, filed by Plaintiffs   |
| December 1, 1988  | Motion for Summary Judgment Denied. Eginton, J.  |
| December 5, 1988  | Plaintiff's Motion to Reconsider and Vacate filed  |
| December 28, 1988 | Motion to Reconsider is granted. Upon reconsideration, the Court's ruling on December 1, 1988 is affirmed. Eginton, J.   |
| January 23, 1989  | Motion for Summary Judgment and Statement of Material Facts filed by Defendant.  |
| January 26, 1989  | Answer of the Defendant filed.   |
| February 17, 1989 | Memo of Decision. The Motion for Summary Judgment is granted. Eginton, J.  |
| February 21, 1989 | Judgment filed and entered. It is therefore ordered and adjudged that judgment be and is hereby entered for the defendants and the case is removed from the docket of the Court. |
| March 7, 1989     | Notice of Appeal filed by Plaintiffs. Order of February 21, 1989.  |



II. United States Court of Appeals for  
the Second Circuit

Docket No. 89-7521

October 5, 1989 Case heard before Newman, Pratt,  
Mahoney, CJJ

December 4, 1989 Intervenor, State of Connecticut, brief  
filed per Court request

March 9, 1990 Judgment reversed and remanded by  
published signed opinion per Judge  
Pratt. Concurrence by separate pub-  
lished signed opinion per Judge  
Mahoney. Dissent by separate published  
signed opinion per Judge Newman.  
Judgment filed.

March 22, 1990 Intervenor State of Connecticut petition  
for rehearing and suggestion for  
rehearing in banc filed.

March 23, 1990 Appellees John F. DiGiovanni petition  
for rehearing with suggestion for  
rehearing en banc filed.

April 25, 1990 Opinion granting intervenor State of  
Connecticut and Appellees John F.  
DiGiovanni *only insofar as to amend the  
prior opinion*, to hold that, except for  
the present case, our declaration of the  
unconstitutionality of Conn. Gen. Stat.  
§ 52-278(a)(1) shall have prospective  
effect, only, i.e., shall be applicable only  
to attachments filed after March 9,  
1990; *Petitions are denied in all other  
respects, filed.*

May 2, 1990 Appellee John F. DiGiovanni Motion for  
Stay of mandate pending filing petition for  
writ of certiorari filed.

May 7, 1990 Order *Denied* Appellee John F. DiGiovanni  
Motion for Stay of mandate pending filing  
for writ of certiorari filed.

May 29, 1990 Order that the panel that heard the appeal  
having granted in part and denied in part  
said petitions for rehearing in an opinion  
filed on April 25, 1990; it is further noted  
that the *suggestions for rehearing in banc  
have been transmitted to the judges of the  
court in regular active service and to any  
other judge on the panel that heard the  
appeal and that no such judge has requested  
that a vote be taken thereon filed.*

June 8, 1990 Mandate issued (opinion, judgment and  
statement of costs) to the district court.

June 25, 1990 **ORDER OF MODIFICATION:** On motion  
of Joanne S. Faulkner, attorney for plaintiff-  
appellant Doeher, the first paragraph of the  
decision of this court, dated April 25, 1990,  
granting in part the petition for rehearing,  
is modified to read as per indicated on the  
second page of this order filed.

July 26, 1990 NOTICE OF FILING petition for writ of  
certiorari by DiGiovanni, et al., dated July  
20, 1990 Supreme Court #90-143 filed.

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

ROLAND PINSKY and JENNIE PINSKY  
EILEEN FEDOWITZ  
BRIAN K. DOEHR

Filed August 8, 1988

V.

CIV. NO. N-88-339 WWE

RICHARD K. DUNCAN  
JOSEPH GOLDEN INSURANCE AGENCY  
JOHN F. DI GIOVANNI

COMPLAINT

1. This is a class action by persons whose real property was attached in conjunction with a lawsuit seeking to collect a disputed debt, without prior notice of other safeguards, by the defendants.

2. The complaint seeks actual and punitive damages against defendants for wrongful attachment and, on behalf of a class, seeks an injunction and a declaratory judgment that Connecticut's prejudgment remedy statute is in violation of plaintiffs' rights to due process and equal protection, together with damages against the defendants under 42 U.S.C. section 1983 and the Fourteenth Amendment to the United States Constitution.

3. Jurisdiction is conferred on this court by 28 U.S.C. sections 1331 and 1343.

4. Plaintiffs are citizens of the United States and residents of New Haven County, Connecticut.

5. Defendants are individuals or entities located in New Haven County, Connecticut.

FACTUAL ALLEGATIONS — Pinskys

6. On June 8, 1988, defendant Richard Duncan, by and through his attorney, attached property of "Roland S. Pinsky, Jeri Pinsky, Susan Avigdor" at 131 Ward Street, New Haven, in connection with a lawsuit against said parties returnable to the Superior Court for the Judicial District of New Haven on July 5, 1988.

7. Susan Avigdor and "Jeri" Pinsky have no interest in said property.

8. Said attachment was made pursuant to an order of Judge Ronald Fracasse, upon application of the defendant Duncan. The sole reason recited as a basis for the application was that "The prejudgment remedy now asked for is an attachment of real property now or formerly of the defendants located in the Town of New Haven, Connecticut."

9. Duncan was aware that the defendants in the state court action disputed the obligation asserted in the complaint.

10. Duncan had no interest in or claim to the property attached.

11. Duncan did not allege, and had no reasonable cause to believe, that special or emergency circumstances existed which would justify an attachment of property prior to judgment.

12. Duncan intended to deprive the Pinskys of the use and enjoyment of their property, and to deprive them of advance notice and opportunity to be heard before attachment of their property.

13. His application for ex parte prejudgment remedy, conclusorily alleged that "there is probable cause that a judgment enter in favor of" himself, and further that "To the best of plaintiff's knowledge, defendants have no set-offs or counterclaims against the plaintiffs."



14. In seeking the attachment, defendant Duncan did not, and could not, allege that (1) the Pinskys were not otherwise subject to the jurisdiction of the state court; (2) that the Pinskys had hidden themselves so that process could not be served on them; (3) that the Pinskys were about to remove themselves or their real property from the state; (4) that the Pinskys had or were about to fraudulently dispose of their property with intent to hinder, delay or defraud his creditors; (5) that the Pinskys had fraudulently hidden or withheld money, property or effects which should be liable to the satisfaction of their debts, (5) that the Pinskys had stated that they are insolvent or unable to pay their debts as they mature or (6) that the transaction was a commercial transaction.

#### **FACTUAL ALLEGATIONS — Fedowitz**

15. Under a return date of May 3, 1988, defendant Joseph Golden Insurance Agency, Inc. ("Golden"), brought an action in Superior Court, New Haven, CV-87-0256318, against Sidney and Eileen Fedowitz, on the basis that each was liable to Golden for the premiums on certain insurance policies.

16. On April 13, 1988, defendant Golden, by and through its attorney, attached property of Eileen Fedowitz at 615 Ellsworth Avenue, New Haven, in connection with said lawsuit.

17. Said attachment was made pursuant to an order of Judge Ronald Fracasse, upon application of the defendant Golden. The sole reason recited as a basis for the application was that "The prejudgment remedy requested is for an attachment of real property."

18. Golden had no interest in or claim to the property attached.

19. Golden did not allege, and had no reasonable cause to believe, that special or emergency circumstances existed which would justify an attachment of property prior to judgment.

20. Golden intended to deprive Ms. Fedowitz of the use and enjoyment of her property, and to deprive her of advance notice and opportunity to be heard before attachment of the property.

21. The application for ex parte prejudgment remedy, alleged the opinion that "there is probable cause that a judgment will be rendered in favor" of the applicant.

22. In seeking the attachment, defendant Golden did not allege that (1) Fedowitz was not otherwise subject to the jurisdiction of the state court; (2) that Fedowitz had hidden herself so that process could not be served on her; (3) that Fedowitz was about to remove herself or the real property from the state; (4) that Fedowitz had or was about to fraudulently dispose of her property with intent to hinder, delay or defraud her creditors; (5) that Fedowitz had fraudulently hidden or withheld money, property or effects which should be liable to the satisfaction of her debts, (5) that Fedowitz had stated that she was insolvent or unable to pay her debts as they mature or (6) that the transaction was a commercial transaction.

#### **Factual Allegations — Doebr**

23. In March, 1988, defendant John Di Giovanni, by and through his attorney, attached property of Brian K. Doebr at 53 Woodland Street, Meriden, Connecticut, in connection with a lawsuit against plaintiff Doebr returnable to the Superior Court for the Judicial District of New Haven at Meriden on April 19, 1988.

24. Said attachment was made pursuant to an order of a Judge of the Superior Court, upon application of the defendant Di Giovanni. The sole reason recited as a basis for the application was that "The prejudgment remedy requested is for an attachment of real property."

25. Di Giovanni was aware that the defendant in the state court action disputed the obligation asserted in the complaint.

26. Di Giovanni had no interest in or claim to the property attached.

27. Di Giovanni did not allege, and had no reasonable cause to believe, that special or emergency circumstances existed which would justify an attachment of property prior to judgment.

28. Di Giovanni intended to deprive Doeher of the use and enjoyment of his property, and to deprive him of advance notice and opportunity to be heard before attachment of the property.

29. His application for ex parte prejudgment remedy conclusorily alleged that "there is probable cause that a judgment will be rendered in favor of" himself, and further alleged the opinion that "there is probable cause that a judgment will be rendered" in his favor.

30. In seeking the attachment, defendant Di Giovanni did not, and could not, allege that (1) Doeher was not otherwise subject to the jurisdiction of the state court; (2) that Doeher had hidden himself so that process could not be served on him; (3) that Doeher was about to remove himself or the real property from the state; (4) that Doeher had or was about to fraudulently dispose of property with intent to hinder, delay or defraud his creditors; (5) that Doeher had fraudulently hidden or withheld money, property or effects which should be liable to the satisfaction of his debts, (5) that Doeher had stated that he was insolvent or unable to pay his debts as they mature or (6) that the transaction was a commercial transaction.

## STATUTORY SCHEME

31. Each plaintiff has had his or her real property attached, without prior notice and without a prior opportunity to be heard, pursuant to section 52-278e(1), which allows a prejudgment remedy to be issued without bond, and without any showing of extraordinary circumstances as is required under section 52-278e(2), merely because the proposed defendant owns real property.

32. Section 52-278e(1) violates plaintiffs' rights to equal protection of the law in the exercise of their basic civil rights to acquire, enjoy, own and dispose of property and their rights of access to the courts, in that

(a) the section has no rational relationship to any valid state interest;

(b) it arbitrarily discriminates against and burdens defendants based solely on real property ownership;

(c) it is not limited in its effect to actions in which the title to unique real property is at issue;

(d) it is not limited in its effect to burdening property of actual obligors, but also burdens property of non-obligated co-owners of the property;

(e) it allows a plaintiff to get an ex parte attachment on real property without notice, but requires a defendant to provide such notice [section 52-278i];

(f) no bond is required to protect the defendant from wrongful attachments of property in which the plaintiff has no interest, whereas a bond is required when a replevin party tries to get his own property back;

(g) if the action has already begun, no prior notice or prior opportunity for hearing is afforded the defendant who



owns real property before action is taken against his interests, as is afforded to other defendants in the normal course of pleading.

33. Section 52-178e(1) violates plaintiffs' rights to due process of the law in the exercise of their basic civil rights to acquire, enjoy, own and dispose of property and their rights of access to the courts, in that

(a) no prior notice of the real estate attachment is required;

(b) no prior notice of defendant's rights is required;

(c) no emergency or extraordinary situation must be alleged;

(d) no opportunity for hearing prior to the attachment is provided;

(e) no prompt post-attachment hearing is required (the plaintiff has ninety days to return the attachment to court under section 52-278j);

(f) no bond is required;

(h) if the action has already begun, no prior notice or prior opportunity for hearing is afforded the defendant as in the normal course of pleading;

(i) even though a plaintiff ordinarily has the burden of proof, the burden is imposed on the defendant to obtain a bond or otherwise obtain release of his property before plaintiff has proven its case;

(j) there is no notice, either prior to or after the attachment, and no opportunity to be heard, for a non-obligated co-owner to challenge the attachment as it affects that person's ability to own, use and enjoy real property.

(k) there is no direct and simple remedy for mistaken deprivations caused by false and conclusory applications and affidavits such as were submitted to the court in these cases.

34. In obtaining ex parte attachments of real property, defendants act jointly with state officials: a Judge of the Superior Court, without whose order no attachment could be obtained, and a sheriff, who serves the attachment papers.

### CLASS ACTION

35. Plaintiffs bring this action individually and pursuant to Rule 23(a), (b)(2) and b)(3) of the Federal Rules of Civil Procedure on behalf of all other persons similarly situated. The class is composed of all residents of the State of Connecticut who own real property and have been or will be sued for payment of a consumer debt. This is a proper class action under Rule 23 of the Federal Rules of Civil Procedure in that:

(a) the parties affected are so numerous that joinder of all parties is impracticable;

(b) there are common questions of law or fact which predominate over any questions which affect only individual members;

(c) the claims of the representative plaintiffs are typical of those of the class;

(d) the representative plaintiffs will fairly and adequately protect the interests of the class;

(e) the party opposing the class has acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief to the class as a whole; and

(f) the class action is superior to other available methods for the fair and efficient adjudication of the controversy.



## PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this Court:

1. Determine by order, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, that this action may be maintained as a class action on the terms described herein.

2. Grant temporary, preliminary and permanent injunctive relief, pursuant to Rule 65 of Federal Rules of Civil Procedure, enjoining defendants from attaching a consumer's real property unless they show the special circumstances set forth in § 52-278e(2) Conn. Gen. Stat.

3. Issue a declaratory judgment that defendants have violated the due process and equal protection rights of the plaintiffs and the class they represent.

4. Award plaintiffs all costs, including attorneys fees, incurred herein.

5. Award each plaintiff actual damages and punitive damages in excess of \$10,000 and such other and further relief as this Court may deem just or equitable.

## PLAINTIFFS

BY /s/ Joanne S. Faulkner  
Joanne S. Faulkner  
123 Avon Street  
New Haven CT 06511  
(203) 562-3501

## UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT

ROLAND PINSKY ET AL.

v.

CIV. NO. N-88-339 WWE

RICHARD K. DUNCAN ET AL.

August 30, 1988

## MOTION FOR SUMMARY JUDGMENT

Plaintiffs move for summary judgment on their claims for declaratory and injunctive relief. Plaintiffs claim that the Connecticut statute allowing a prejudgment attachment of real property without a bond and without a showing of special circumstances violates rights under the Due Process and Equal Protection Clauses of the United States Constitution. As to the declaratory and injunctive relief sought, plaintiffs claim the statute is unconstitutional on its face, and there are no genuine issues as to any material fact.

ORAL ARGUMENT  
NOT REQUESTED

THE PLAINTIFFS

By \_\_\_\_\_  
JOANNE S. FAULKNER  
ATTORNEY AT LAW  
123 Avon Street  
New Haven, Connecticut 06511  
(203) 562-3501

Certification to Richard K. Duncan, 375 Lombard St, New Haven CT 06513, Jos. Golden Insurance Agency, 95 Crown St., New Haven CT 06509, and John Di Giovanni, 273 Byron Rd, South Meriden CT 06450 on August 30, 1988.

\_\_\_\_\_  
Joanne S. Faulkner

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

ROLAND PINSKY ET AL.

v.

CIV. NO. N-88-339 WWE

RICHARD K. DUNCAN ET AL.

August 30, 1988

STATEMENT OF MATERIAL FACTS

1. Each plaintiff herein was sued in state court by the respective named defendants, as more fully set forth in the complaint.

2. Prior to the inception of the suit, pursuant to § 52-278e(1), each plaintiff had real property attached without prior notice or opportunity to be heard, in the absence of emergency or special circumstances, without bond to protect them against wrongful attachment, and without prior notice, pursuant to the procedures of Chapter 903a of the Connecticut General Statutes.

THE PLAINTIFFS

By \_\_\_\_\_  
JOANNE S. FAULKNER  
ATTORNEY AT LAW  
123 Avon Street  
New Haven, Connecticut 06511  
(203) 562-3501

Certification to Richard K. Duncan, 375 Lombard St, New Haven CT 06513, Jos. Golden Insurance Agency, 95 Crown St., New Haven CT 06509, and John Di Giovanni, 273 Byron Rd, South Meriden CT 06450 on August 30, 1988.

\_\_\_\_\_  
Joanne S. Faulkner

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

ROLAND PINSKY ET AL.

Filed August 31, 1988

v.

CIV. NO. N-88-339 WWE

RICHARD K. DUNCAN ET AL.

August 30, 1988

MOTION FOR SUMMARY JUDGMENT

Plaintiffs move for summary judgment on their claims for declaratory and injunctive relief. Plaintiffs claim that the Connecticut statute allowing a prejudgment attachment of real property without a bond and without a showing of special circumstances violates rights under the Due Process and Equal Protection Clauses of the United States Constitution. As to the declaratory and injunctive relief sought, plaintiffs claim the statute is unconstitutional on its face, and there are no genuine issues as to any material fact.

ORAL ARGUMENT  
NOT REQUESTED

THE PLAINTIFFS

By /s/ Joanne S. Faulkner  
JOANNE S. FAULKNER  
ATTORNEY AT LAW  
123 Avon Street  
New Haven, Connecticut 06511  
(203) 562-3501

\*

Certification to Richard K. Duncan, 375 Lombard St, New Haven CT 06513, Jos. Golden Insurance Agency, 95 Crown St., New Haven CT 06509, and John Di Giovanni, 273 Byron Rd, South Meriden CT 06450 on August 30, 1988.

/s/ Joanne S. Faulker  
Joanne S. Faulkner

**\* Marginal Ruling:**

December 1, 1988: "The facial constitutional validity of Sec. 52-278e . . . stands beyond question . . ." *Read v. Jacksen*, Civil No. B-85-85, Ruling on Defendant's Motions for Summary Judgment, slip op. at 8 (D. Conn. February 19, 1988) (Zampano, J.). Motion DENIED.

/s/ Warren W. Eginton  
WARREN W. EGINTON, U.S.D.J.

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

ROLAND PINSKY ET AL.

Filed December 5, 1988

v.

CIV. NO. N-88-339 WWE

RICHARD K. DUNCAN ET AL.

December 5, 1988

**PLAINTIFF'S MOTION TO RECONSIDER  
AND VACATE**

Plaintiffs respectfully move this Court to reconsider and vacate the orders entered herein on December 1, 1988, denying plaintiffs' Motions for Summary Judgment and Class Certification, and granting one defendant's Motion for Summary Judgment solely on the basis of a general statement in *Read v. Jacksen*, B-85-85.

That case is unlike the instant case, since it involved the constitutionality of post-attachment proceedings. This involves the constitutionality of the prejudgment attachment (PJR) itself.

In *Read v. Jacksen*, Judge Zampano was not asked to decide, and did not decide, whether a PJR without a bond is constitutional. The cases which have actually considered that issue are uniform in ruling that a PJR statute without a bond is unconstitutional.

In *Read v. Jacksen*, Judge Zampano was not asked to decide, and did not decide, whether a PJR based solely on the fact that a state court defendant owns real property is constitutional. The cases which have actually considered that issue are uniform in ruling that such a statute is unconstitutional.

**\***

Plaintiffs submit that they should not be deprived of their opportunity to be heard on the specific issues they are



raising in the instant case, because of dicta in a decision considering different and unrelated issues between different and unrelated parties. No principle of collateral estoppel or res judicata supports such a result. An unsuccessful attack on the constitutionality of a statute on specific issues should not thereby preclude others from bringing a different attack on different issues.

There is, and has been for several years, no open question as to centrality of the bond requirement, or as to the invalidity of an ex parte attachment of real property just because it is real property. Those issues were not addressed in *Read*.

Since the defendant has been able to cite no cases upholding the constitutionality of the statute with reference to the specific aspects challenged in this case, and since the constitutional case law in the area of prejudgment attachments has been well established since 1975, and since Connecticut's statute was drafted in response to pre-1973 authority, plaintiffs' Motion for Summary Judgment should instead have been granted, and the defendant's Motion denied.

#### PLAINTIFFS

By \_\_\_\_\_  
Joanne S. Faulkner  
123 Avon Street  
New Haven CT 06511  
(203) 562-3501

#### \* Marginal Ruling:

December 28, 1988: The motion to reconsider is GRANTED. Upon reconsideration, the Court's ruling of December 1, 1988 is AFFIRMED.

/s/ Warren W. Eginton  
WARREN W. EGINTON, U.S.D.J.

#### UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT

EILEEN FEDOWITZ ET AL. :

VS. :

CIVIL NO. N-88-338 WWE

JOSEPH GOLDEN INSURANCE :  
AGENCY, INC. ET ALS :

#### MOTION FOR SUMMARY JUDGEMENT BY DEFENDENT, JOHN F. DIGIOVANNI

The Defendant, John F. DiGiovanni, moves for summary judgement in his favor for the following reasons:

1. There are no genuine issues as to any material fact.
2. The Connecticut Statute (Section 52-278 e) allowing a prejudgement attachment of real estate without a prior hearing does not violate rights under the due process and equal protection clause of the United States Constitution and is constitutional on its face.

Argument not required.  
Testimony not requested.

The Defendant, John F. DiGiovanni  
By \_\_\_\_\_  
His Attorney

I hereby certify that a copy of the foregoing Motion by Summary Judgement was mailed to Joanne S. Faulkner, 123 Avon Street, New Haven, CT. 06511, Attorney for Eileen Fedowitz et al, to the Defendant, Attorney David Greenberg of 385 Orange Street, New Haven, CT. for Richard K. Duncan, 375 Lombard Street, New Haven, CT., 06513 to Lawrence J. Greenberg and Milton A. Bernblum of the firm Gold, Bernblum & Greenberg, One Whitney Avenue, New Haven CT. 06510 attorneys for the defendant Joseph Golden Insurance Agency, Inc., by United States Mail, postage prepaid on this 20th day of January, 1989.

JOSEPH P. PATRUCCO  
ATTORNEY FOR JOHN F. DI GIOVANNI

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF CONNECTICUT

EILEEN FEDOWITZ ET AL :

VS. :

CIVIL NO. N-88-338 WWE

JOSEPH GOLDEN INSURANCE :  
AGENCY, INC. ET ALS :

STATEMENT OF MATERIAL FACTS

1. By complaint dated March 15, 1988, returnable to the Superior Court held at Meriden for the Judicial District of New Haven, on the 21st day of March 1988, the Defendant herein, John F. Di Giovanni, commenced an action for assault and battery against the Plaintiff, Brian K. Doeher. (See Appendix A-1 through A-9).

2. In Conjunction with said commencement of the action, the Defendant herein, John F. Di Giovanni, in accordance with the provisions of Chapter 903 A of the Connecticut General Statutes, Rev. 1987, and in particular, Section 52-278e thereof, secured an ex parte prejudgment remedy in the nature of an attachment of real estate jointly owned by the Plaintiff herein, Brian K. Doeher. (See Appendix A1 through A9).

3. In further conjunction therewith, the Defendant herein, John F. Di Giovanni, filed an affidavit setting forth facts sufficient to show that there was probable cause that a judgment would be rendered in that action for the Defendant herein, John F. Di Giovanni, and against the Plaintiff herein, Brian K. Doeher. (See Appendix A1 through A9).

4. The process served upon the Plaintiff herein, Brian K. Doeher, contained the following notice:

RETURN DATE: APRIL 19, 1988

SUPERIOR COURT

JOHN F. DI GIOVANNI

JUDICIAL DISTRICT  
OF NEW HAVEN

VS.

AT MERIDEN

BRIAN K. DOEHR

MARCH 15, 1988

NOTICE TO DEFENDANT

You have rights specified in the Connecticut General Statutes, including Chapter 903 a, which you may wish to exercise concerning this prejudgment remedy. These rights include: (1) The right to a hearing to object to the prejudgment remedy for lack of probable cause to sustain the claim; (2) The right to a hearing to request that the prejudgment remedy be modified, vacated or dismissed or that bond be substituted; and (3) The right to a hearing as to any portion of the property attached which you claim is exempt from execution.

THE PLAINTIFF

BY: JOSEPH P. PATRUCCO  
HIS ATTORNEY

5. On or about April 12, 1988 an appearance in the case was made in behalf the Plaintiff, Brian K. Doeher, by Attorney Irving J. Pinsky (See Appendix B).

6. Thereafter, and up to the date of this Motion for Summary Judgement, The Plaintiff, Brian K. Doeher, through his appearing attorney, Attorney Irving J. Pinsky, has not made any effort or application to dissolve, modify, or otherwise have a hearing for relief with regard to said prejudgement attachment, all as made available to him under Chapter 903 a of the Connecticut General Statutes.

The Defendant, John F. Di Giovanni

By \_\_\_\_\_  
His Attorney

RETURN DATE: APRIL 19, 1988 SUPERIOR COURT

JOHN F. DI GIOVANNI JUDICIAL DISTRICT  
OF NEW HAVEN

VS. AT MERIDEN

BRIAN K. DOEHR MARCH 15, 1988

### APPLICATION

The undersigned represents:

1. That JOHN F. DI GIOVANNI of 273 Byron Road, South Meriden, Connecticut is about to commence an action against BRIAN K. DOEHR of 53 Woodland Street, Meriden, Connecticut pursuant to the attached proposed unsigned writ, summons, complaint and affidavit.

2. That there is probable cause that a judgment will be rendered in such matter in favor of the applicant and to secure such judgment the applicant seeks an order from this court directing that the following prejudgment remedy be issued to secure the sum of \$75,000.00.

To attach the following described real property of the defendant, Brian K. Doeher, located in the City of Meriden and further described as follows:

As described on Schedule A attached hereto and made a part hereof.

3. The prejudgment remedy requested is for an attachment of real property.

JOHN F. DI GIOVANNI

BY: /s/ Joseph P. Patrucco  
JOSEPH P. PATRUCCO  
HIS ATTORNEY

Appendix A-1



RETURN DATE: APRIL 19, 1988      SUPERIOR COURT  
JOHN F. DI GIOVANNI              JUDICIAL DISTRICT  
   OF NEW HAVEN  
VS.                                      AT MERIDEN

BRIAN K. DOEHR                      MARCH 16, 1988

**A F F I D A V I T**

STATE OF CONNECTICUT    )  
   ) ss. At Meriden  
COUNTY OF NEW HAVEN    )

Personally appeared, John F. DiGiovanni, who being duly sworn, deposes and says:

1. I am thoroughly familiar with the facts contained in the unsigned complaint and in the application for prejudgment remedy in the above entitled matter, and the facts set forth in each are true to the best of my knowledge and belief.
2. On March 13, 1988 I was willfully, wantonly and maliciously assaulted by the defendant, Brian K. Doeher.
3. Said assault and battery broke my left wrist and further caused an ecchymosis to my right eye, as well as other injuries to my head, limbs and body.
4. My left arm is in a cast and I am restricted in my usual duties and I have further expended sums of money for medical care and treatment and I will be obliged to expend further sums in the future.
5. In my opinion, the foregoing facts are sufficient to show that there is probable cause that judgment will be rendered for the plaintiff.

/s/ John F. DiGiovanni  
JOHN F. DI GIOVANNI, PLAINTIFF

**Appendix A-2**

On This this 16th day of March, 1988, before me, Joseph P. Patrucco, the undersigned officer, personally appeared, John F. DiGiovanni, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained, as his free act and deed.

/s/ Joseph P. Patrucco  
COMMISSIONER OF THE  
SUPERIOR COURT

RETURN DATE: APRIL 19, 1988      SUPERIOR COURT  
JOHN F. DI GIOVANNI      JUDICIAL DISTRICT  
   OF NEW HAVEN  
VS.  
   AT MERIDEN  
BRIAN K. DOEHR      MARCH 16, 1988

**ORDER FOR PREJUDGMENT REMEDY**

Whereas, the plaintiff in the above entitled action has made application for a prejudgment remedy to attach real property of the defendant, and

Whereas, from an examination of the application, proposed complaint and accompanying affidavit, it is found that there is probable cause to sustain the validity of the plaintiff's claim, that the application should be granted ex parte because the prejudgment remedy requested is for an attachment of real property.

Now, therefore, it is hereby ordered that the plaintiff may attach to the value of \$75,000.00 the following goods or estate of the defendant, BRIAN K. DOEHR, the real estate as described in Schedule A attached hereto.

Dated at Meriden,      BY THE COURT (      ,J.)  
Connecticut this 17th  
day of March, 1988      [signature illegible]  
   JUDGE.

Appendix A-3

RETURN DATE: APRIL 19, 1988      SUPERIOR COURT  
JOHN F. DI GIOVANNI      JUDICIAL DISTRICT  
   OF NEW HAVEN  
VS.  
   AT MERIDEN  
BRIAN K. DOEHR      MARCH 15, 1988

To Any Proper Officer:

By Authority of the State of Connecticut, you are hereby commanded, in accordance with the accompanying order, to attach to the value of \$75,000.00, the goods or estate of BRIAN K. DOEHR, of 53 Woodland Street, Meriden, Connecticut and summon him to appear before the Superior Court for the Judicial District of New Haven at Meriden on the 19th day of April, 1988, such appearance to be made by each of defendants or their attorney by filing a written statement of appearance with the Clerk of the Court on or before the second day following the return date, then and there to answer unto JOHN F. DI GIOVANNI of 273 Byron Road, South Meriden, Connecticut, in a civil action wherein the plaintiff complains and alleges as set forth in the accompanying complaint.

E. Drezak of 39 Butler Street, Meriden, conn. is recognized in the sum of \$250.00 to prosecute, etc.

/s/ Joseph P. Patrucco  
JOSEPH P. PATRUCCO  
COMMISSIONER OF THE SUPERIOR COURT

Appendix A-4

RETURN DATE: APRIL 19, 1988

SUPERIOR COURT

JOHN F. DI GIOVANNI

JUDICIAL DISTRICT  
OF NEW HAVEN

VS.

AT MERIDEN

BRIAN K. DOEHR

MARCH 15, 1988

### COMPLAINT

1. On March 13, 1988 the defendant assaulted the plaintiff and beat him with his fists.

2. Said assault and battery broke the plaintiff's left wrist, and caused an ecchymosis to his right eye, as well as other injuries to my head, limbs and body.

3. The assault was willful, wanton and malicious.

4. As a result of said injuries the plaintiff has been and in the future will be obliged to expend sums of money for medical care and treatment, doctors, hospitals, x-rays, physiotherapy, medical appliances and medicines.

5. As a further result of said injuries the plaintiff has been and will be restricted in his usual activities.

The Plaintiff Claims Damages.

### PLAINTIFF

BY: /s/ Joseph P. Patrucco  
JOSEPH P. PATRUCCO  
HIS ATTORNEY

Appendix A-5

### AMOUNT IN DEMAND

The amount, legal interest or property in demand is not less than \$15,000.00 exclusive of interest and costs.

Appendix A-6

### SCHEDULE A

All that certain piece or parcel of land, with all buildings and improvements thereon, known as No. 53 Woodland Street and situated in the City of Meriden County of New Haven and State of Connecticut, bounded and described as follows:

NORTH: by land now or formerly of Caroline Treiber, 120 feet;

EAST: by land now or formerly of Meriden, Waterbury & Connecticut River Railroad, 54' 9";

SOUTH: by land now or formerly of Frank Klein, 95 feet;

WEST: by Woodland Street, 50 feet.

Appendix A-7



RETURN DATE: APRIL 19, 1988      SUPERIOR COURT  
JOHN F. DI GIOVANNI      JUDICIAL DISTRICT  
   OF NEW HAVEN  
VS.      AT MERIDEN  
BRIAN K. DOEHR      MARCH 15, 1988

**NOTICE TO DEFENDANT**

You have rights specified in the Connecticut General Statutes, including Chapter 903 a, which you may wish to exercise concerning this prejudgment remedy. These rights include: (1) The right to a hearing to object to the prejudgment remedy for lack of probable cause to sustain the claim; (2) The right to a hearing to request that the prejudgment remedy be modified, vacated or dismissed or that a bond be substituted; and (3) the right to a hearing as to any portion of the property attached which you claim is exempt from execution.

**THE PLAINTIFF**

BY: /s/ Joseph P. Patrucco  
JOSEPH P. PATRUCCO  
HIS ATTORNEY

**Appendix A-8**

State of Connecticut      )  
   ) ss. Meriden March 21, A.D. 1988  
County of New Haven      )

Then and there by virtue hereof and by a court order and direction of the Plaintiff's Attorney, I attached all right, title and interest of the within named defendant BRIAN K. DOEHR in and to the following described piece or parcel of land, situated in said Town of Meriden in said County, together with all the buildings standing thereon, by leaving at the office of the Town Clerk of said Town of Meriden a certificate of attachment, according to law, in which certificate is specified the court to which this writ is returnable, the parties hereto, the amount of damages claimed herein, the land bounded and described as follows, to wit:

**SCHEDULE A**

All that certain piece or parcel of land, with all buildings and improvements thereon, known as No. 53 Woodland Street and situated in the City of Meriden County of New Haven and State of Connecticut, bounded and described as follows:

NORTH: by land now or formerly of Caroline Treiber, 120 feet;  
EAST: by land now or formerly of Meriden, Waterbury & Connecticut River Railroad, 54' 9";  
SOUTH: by land now or formerly of Frank Klein, 95 feet;  
WEST: by Woodland Street, 50 feet.

And afterwards on the 21st day of March A.D., 1988, I left a true and attested copy of the original Application of Prejudgment Remedy, Affidavit, Schedule "A", Exhibit, Order and Writ, Summons and Complaint with my doings thereon endorsed as follows: At the usual place of abode of the within-named Defendant, BRIAN K. DOEHR at 53 Woodland Street in the Town of Meriden.

The within and foregoing is the original with my doings endorsed hereon.

**FEES:**

|                        |                |
|------------------------|----------------|
| Copy .....             | \$ 8.00        |
| Service .....          | 20.00          |
| Endorsement .....      | .80            |
| Travel .....           | 1.20           |
| Certificate .....      | 5.00           |
| Search Records .....   | 5.00           |
| Town Clerk's Fee ..... | 5.00           |
| <b>TOTAL .....</b>     | <b>\$45.00</b> |

**ATTEST,**

Sanford E. Sheftel,  
Deputy Sheriff

Appendix A-9

Return Date April 19, 1988

Docket No.

JOHN F. DI GIOVANNI      Superior Court, Judicial  
District of NEW HAVEN

vs.

G.A. 7 at MERIDEN

BRYAN K. DOEHR

APRIL 12, 1988

**A P P E A R A N C E**

Please enter the appearance of

LAW OFFICES OF IRVING J. PINSKY  
P.O. BOX 1469, NEW HAVEN, CT 06506  
Juris Number 101271, Telephone Number (203) 624-3175

in the above entitled case for

The Defendant

Signed Irving J. Pinsky  
Irving J. Pinsky

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF CONNECTICUT

EILEEN FEDOWITZ ET AL :

VS. :

CIVIL NO. N-88-338 WWE

JOSEPH GOLDEN INSURANCE :  
AGENCY, INC. ET ALS :

ANSWER OF THE DEFENDANT,  
JOHN F. DI GIOVANNI

This defendant denies the material allegations contained in paragraphs 1, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 of the plaintiff's complaint.

This defendant admits the material allegations contained in Paragraphs 5 as it pertains to him, and 23 of the plaintiff's complaint.

With respect to Paragraphs 2, 3, 4 and 35 of the plaintiffs complaint, this defendant does not have sufficient knowledge upon which to form or base a belief and therefore leaves the plaintiff to his proof.

The factual allegations relating to the plaintiffs Pinsky and Fedowitz contained in paragraphs 6 through 22 of the plaintiffs complaint do not apply to this defendant and thus he will not plead to said allegations.

AFFIRMATIVE DEFENSE OF THE DEFENDANT,  
JOHN F. DI GIOVANNI

At the time of the serving of process in the matter of DiGiovanni vs. Brian K. Doeher returnable to the Superior Court for the Judicial District of New Haven, at Meriden, DiGiovanni furnished notice to said Doeher as to his rights

with relation to the prejudgment remedy in accordance with Exhibit "A" attached hereto.

An appearance in said court in behalf of Doeher was entered by one Attorney Irving J. Pinsky who, to the date of this pleading, has never applied for a hearing for the purpose of objecting to the prejudgment remedy complained of, all in accordance with the provisions of Section 52-278 e (b) of the Connecticut General Statutes.

THE DEFENDANT,  
JOHN F. DI GIOVANNI

BY: /s/ Joseph P. Patrucco  
Joseph P. Patrucco  
his Attorney



EXHIBIT "A"

RETURN DATE: APRIL 19, 1988      SUPERIOR COURT  
JOHN F. DI GIOVANNI      JUDICIAL DISTRICT  
   OF NEW HAVEN  
VS.      AT MERIDEN  
BRIAN K. DOEHR      MARCH 15, 1988

NOTICE TO DEFENDANT

You have rights specified in the Connecticut General Statutes, including Chapter 903 a, which you may wish to exercise concerning this prejudgment remedy. These rights include: (1) The right to a hearing to object to the prejudgment remedy for lack of probable cause to sustain the claim; (2) The right to a hearing to request that the prejudgment remedy be modified, vacated or dismissed or that a bond be substituted; and (3) the right to a hearing as to any portion of the property attached which you claim is exempt from execution.

THE PLAINTIFF

BY: /s/ Joseph P. Patrucco  
JOSEPH P. PATRUCCO  
HIS ATTORNEY

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

Roland Pinsky, Jennie Pinsky  
Eileen Fedowitz, Brian K. Doeher

v.

Docket No. N-88-339 (WWE)

Richard K. Duncan  
Joseph Golden Ins. Agency Inc.  
John F. Di Giovanni

NOTICE OF APPEAL

1. Pursuant to Fed. R. App. P. 4(a)(1), Richard Pinsky, Jennie Pinsky, Eileen Fedowitz, Brian K. Doeher hereby gives notice and appeals to the United States Court of Appeals for the Second Circuit from the following judgment or order (describe the judgment or order): Granting summary judgment to each defendant and denying summary judgment to each plaintiff.

2. The judgment/order in this action was entered on Feb. 21 1989.

signature: /s/ Joanne S. Faulkner  
address: 123 Avon St  
New Haven CT 06511

date: 3/6/89

United States Court of Appeals  
FOR THE SECOND CIRCUIT

FILED MAY 2 1990

ROLAND PINSKY, et al. 89-7521

v.

RICHARD DUNCAN, et al.

NOTICE OF MOTION  
for Stay of Mandate  
Pending Filing Petition  
for Writ of Certiorari

MOTION BY:

Andrew M. Calamari  
2429 Hering Ave.  
Bronx, N.Y. 10469  
(212) 655-3636

OPPOSING COUNSEL:

Joanne S. Faulkner  
123 Avon St.,  
New Haven, CT 06511  
(203) 772-0395

Intervenor: Atty. Gen., State of Conn., Att: Henry Cohn  
55 Elm St., Hartford, CT 06106—(203) 566-4990

Has consent of opposing counsel:

A. been sought? No

B. been obtained? No

Has service been effected? Yes

-Is oral argument desired? No

(Substantive motions only)

Brief statement of the relief requested:

Stay of Mandate pending filing petition for writ of certiorari  
with U.S. Supreme Court.

By: /s/ Andrew M. Calamari  
Andrew M. Calamari

Appearing for:  
Defendant Appellee  
Di Giovanni

May 1, 1990

Appellee or Respondent:  
Defendant

ORDER

IT IS HEREBY ORDERED that the motion be and it  
hereby is denied

FILED MAY 7 1990

/s/ George C. Pratt  
/s/ Jon O. Newman  
/s/ J. Daniel Mahoney  
Circuit Judge